

Assembly Bill No. 380

CHAPTER 653

An act to amend Sections 3652, 3653, 3654, 4009, 7575, 7642, 17212, and 17402 of, to amend the heading of Chapter 6 (commencing with Section 3650) of Part 1 of Division 9 of, to add Sections 17400.5, 17401, 17433, 17521, and 17530 to, to add Article 4 (commencing with Section 3690) to Chapter 6 of Part 1 of Division 9 of, and to repeal Section 4071.5 of, the Family Code, to add Section 166.5 to the Penal Code, and to amend Sections 11350, and 11478.1 of, and to add Sections 11350.61, 11356.2, 11358, 11475.12, and 11475.14 to, the Welfare and Institutions Code, relating to support orders.

[Approved by Governor October 6, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 380, R. Wright. Support orders: modification: set aside: enforcement.

(1) Existing law establishes procedures and time limits for granting a party relief from a default, judgment, dismissal, or other order on specified grounds in any civil action and for granting a party relief from a judgment, or any part thereof, on specified grounds in proceedings for dissolution or nullity of marriage or legal separation of the parties. Existing law also provides procedures for the modification or termination of child, family, and spousal support orders.

This bill would authorize the court to set aside a support order, or any part thereof, on the grounds of fraud, perjury, or lack of notice, as specified and would establish procedures and time limits therefor.

(2) Existing law provides that an order for child support may be made retroactive to the date of the filing of the notice of motion or order to show cause, subject to specified provisions of federal law.

This bill would instead provide that those orders may be made retroactive to the date of the filing of the petition or other first pleading, except as specified.

(3) Existing law provides that, if an order decreasing or terminating support is entered retroactively, the support obligee shall not be obligated to repay any amounts paid pursuant to the prior order that are in excess of the amounts due pursuant to the retroactive order.

This bill would instead provide that, in those circumstances, the support obligee may be obligated to repay those excess amounts, on terms ordered by the court after consideration of specified factors.

(4) Existing law provides that, for purposes of computing the minimum level of child support, no deduction from income shall be granted if specified aid payments are being made to the child or children of the parent seeking the deduction, even if the payments are being received by the other parent.

This bill would repeal that provision.

(5) In proceedings against an individual for failure to sufficiently provide for the support of his or her children or spouse, existing law authorizes the court to suspend the proceedings or sentence, at specified times in the proceedings, if the defendant enters into an undertaking conditioned upon the defendant paying support, as specified.

This bill would authorize the court, at those specified times in the proceedings and upon similar conditions, to suspend the proceedings or sentence in a contempt action against an individual for failure to comply with a court order for payment of child, family, or spousal support.

(6) Existing law declares that, if a family is granted aid under the CalWORKs program as a result of the absence of a parent from the family home, the noncustodial parent shall reimburse the county for the amounts of unpaid support specified in the support order or, in the absence of an order, the amount that would have been specified in the order for the period of separation or desertion.

This bill would, in the absence of a support order, limit that recovery by the county to the amount that would have been specified in an order for support, for a period not to exceed one year prior to the date of the filing of the complaint or petition.

(7) Existing law requires the district attorney, in specified child support cases, to provide to the Department of Social Services a list of persons who are not in compliance with a support order or judgment; which list is then provided by the department to all state boards that issue licenses, as defined, for the purpose of withholding issuance or renewal of any license to any person named on the list, until a release is issued by the district attorney. If a license applicant believes his or her name should be deleted from the list, existing law specifies procedures for judicial review of that issue in the superior court.

This bill would authorize the judicial review to be conducted by the municipal court, in counties in which there is a municipal court, if specified criminal proceedings are pending against the applicant in that court at the time review is sought.

(8) Existing law provides that an action may be brought by the district attorney to obtain or enforce a child support obligation on behalf of a parent who has requested or is receiving support enforcement services of the district attorney. In those actions, a default judgment may be entered against a defendant who fails to answer or otherwise appear within a specified time. Existing law also



provides that when a parent makes an application for child support services, the applicant shall provide the district attorney with a statement of arrearages, if any are owed. Existing law provides procedures for the district attorney to review the amount of arrearages alleged in that statement.

This bill would establish, as of a specified date, procedures and remedies if a person claims that a default judgment has been entered, or enforcement actions have been taken, against him or her in error due to mistaken identity, as specified. Filing a false claim of mistaken identity would be punishable as a misdemeanor. If the district attorney rejects a person's claim of mistaken identity, or fails to provide the remedies specified, the bill would provide that the person would be entitled to file a court action to obtain that relief. The bill would also impose additional requirements on district attorneys regarding service of process on defendants in support establishment and enforcement actions.

(9) The bill would declare that the act shall be referred to as the Child Support Enforcement Fairness Act of 2000 and would make related findings and declarations.

(10) The bill would provide that certain of its provisions would be operative in the Family Code if AB 196 is enacted and becomes operative, otherwise those provisions would become operative in the Welfare and Institutions Code.

(11) Because this bill would create a new crime and would impose new duties on local personnel, it would create a state-mandated local program.

(12) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. (a) This act shall be referred to as the Child Support Enforcement Fairness Act of 2000.

(b) The Legislature finds and declares as follows:



(1) The efficient and fair enforcement of child support orders is essential to ensuring compliance with those orders and respect for the administration of justice.

(2) A large number of child support orders are obtained by a default judgment. In one study by the Judicial Council, more than 70 percent of all child support orders studied were obtained by default judgment. Very often, by the time a support obligor receives actual notice of the support order, the accumulated amount of arrearages totals tens of thousands of dollars. These arrearages amounts, particularly for a low wage earner, are a significant obstacle to good faith compliance. Ensuring prompt, actual notice of a child support obligation will prevent the accumulation of large amounts of arrearages and encourage greater timely compliance.

(3) Thousands of individuals each year are mistakenly identified as being liable for child support actions. As a result of that action, the ability to earn a living is severely impaired, assets are seized, and family relationships are often destroyed. It is the moral, legal, and ethical obligation of all enforcement agencies to take prompt action to recognize those cases where a person is mistakenly identified as a support obligor in order to minimize the harm and correct any injustice to that person.

SEC. 2. The heading of Chapter 6 (commencing with Section 3650) of Part 1 of Division 9 of the Family Code is amended to read:

CHAPTER 6. MODIFICATION, TERMINATION, OR SET ASIDE OF
SUPPORT ORDERS

SEC. 3. Section 3652 of the Family Code is amended to read:

3652. Except as against a governmental agency, an order modifying, terminating, or setting aside a support order may include an award of attorney's fees and court costs to the prevailing party.

SEC. 4. Section 3653 of the Family Code is amended to read:

3653. (a) An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as provided in subdivision (b) or by federal law (42 U.S.C. Sec. 666(a)(9)).

(b) If an order modifying or terminating a support order is entered due to the unemployment of either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of motion or order to show cause to modify or terminate or the date of unemployment, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record.

(c) If an order decreasing or terminating a support order is entered retroactively pursuant to this section, the support obligor

may be entitled to, and the support obligee may be ordered to repay, according to the terms specified in the order, any amounts previously paid by the support obligor pursuant to the prior order that are in excess of the amounts due pursuant to the retroactive order. The court may order that the repayment by the support obligee shall be made over any period of time and in any manner, including, but not limited to, by an offset against future support payments or wage assignment, as the court deems just and reasonable. In determining whether to order a repayment, and in establishing the terms of repayment, the court shall consider all of the following factors:

- (1) The amount to be repaid.
- (2) The duration of the support order prior to modification or termination.
- (3) The financial impact on the support obligee of any particular method of repayment such as an offset against future support payments or wage assignment.
- (4) Any other facts or circumstances that the court deems relevant.

SEC. 5. Section 3654 of the Family Code is amended to read:

3654. At the request of either party, an order modifying, terminating, or setting aside a support order shall include a statement of decision.

SEC. 6. Article 4 (commencing with Section 3690) is added to Chapter 6 of Part 1 of Division 9 of the Family Code, to read:

Article 4. Relief From Orders

3690. (a) The court may, on any terms that may be just, relieve a party from a support order, or any part or parts thereof, after the six-month time limit of Section 473 of the Code of Civil Procedure has run, based on the grounds, and within the time limits, provided in this article.

(b) In all proceedings under this division, before granting relief, the court shall find that the facts alleged as the grounds for relief materially affected the original order and that the moving party would materially benefit from the granting of the relief.

(c) Nothing in this article shall limit or modify the provisions of Section 11356 or 11356.2 of the Welfare and Institutions Code.

(d) This section shall not be operative if Assembly Bill 196, of the 1999–2000 Regular Session, is enacted and becomes operative.

3690. (a) The court may, on any terms that may be just, relieve a party from a support order, or any part or parts thereof, after the six-month time limit of Section 473 of the Code of Civil Procedure has run, based on the grounds, and within the time limits, provided in this article.

(b) In all proceedings under this division, before granting relief, the court shall find that the facts alleged as the grounds for relief

materially affected the original order and that the moving party would materially benefit from the granting of the relief.

(c) Nothing in this article shall limit or modify the provisions of Section 17432 or 17433.

(d) This section shall only be operative if Assembly Bill 196, of the 1999–2000 Regular Session, is enacted and becomes operative.

3691. The grounds and time limits for an action or motion to set aside a support order, or any part or parts thereof, are governed by this section and shall be one of the following:

(a) Actual fraud. Where the defrauded party was kept in ignorance or in some other manner, other than his or her own lack of care or attention, was fraudulently prevented from fully participating in the proceeding. An action or motion based on fraud shall be brought within six months after the date on which the complaining party discovered or reasonably should have discovered the fraud.

(b) Perjury. An action or motion based on perjury shall be brought within six months after the date on which the complaining party discovered or reasonably should have discovered the perjury.

(c) Lack of Notice.

(1) When service of a summons has not resulted in notice to a party in time to defend the action for support and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event later than six months after the party obtains or reasonably should have obtained notice (A) of the support order, or (B) that the party's income and assets are subject to attachment pursuant to the order.

(2) A notice of motion to set aside a support order pursuant to this subdivision shall be accompanied by an affidavit showing, under oath, that the party's lack of notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action.

(3) The court may not set aside or otherwise relieve a party from a support order pursuant to this subdivision if service of the summons was accomplished in accordance with existing requirements of law regarding service of process.

3692. Notwithstanding any other provision of this article, or any other law, a support order may not be set aside simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances caused the support ordered to become excessive or inadequate.

3693. When ruling on an action or motion to set aside a support order, the court shall set aside only those provisions materially affected by the circumstances leading to the court's decision to grant

relief. However, the court has discretion to set aside the entire order, if necessary, for equitable considerations.

SEC. 7. Section 4009 of the Family Code is amended to read:

4009. Except as provided in subdivision (c) of Section 11475.1 of the Welfare and Institutions Code, an original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading. If the parent ordered to pay support was not served with the petition, complaint, or other initial pleading within 90 days after filing and the court finds that the parent was not intentionally evading service, the child support order shall be effective no earlier than the date of service.

SEC. 8. Section 4009 of the Family Code is amended to read:

4009. Except as provided in subdivision (c) of Section 17400, an original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading. If the parent ordered to pay support was not served with the petition, complaint, or other initial pleading within 90 days after filing and the court finds that the parent was not intentionally evading service, the child support order shall be effective no earlier than the date of service.

SEC. 9. Section 4071.5 of the Family Code is repealed.

SEC. 10. Section 7575 of the Family Code is amended to read:

7575. (a) Either parent may rescind the voluntary declaration of paternity by filing a rescission form with the State Department of Social Services within 60 days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The State Department of Social Services shall develop a form to be used by parents to rescind the declaration of paternity and instruction on how to complete and file the rescission with the State Department of Social Services. The form shall include a declaration under penalty of perjury completed by the person filing the rescission form that certifies that a copy of the rescission form was sent by any form of mail requiring a return receipt to the other person who signed the voluntary declaration of paternity. A copy of the return receipt shall be attached to the rescission form when filed with the State Department of Social Services. The form and instructions shall be written in simple, easy to understand language and shall be made available at the local family support office and the office of local registrar of births and deaths. The department shall, upon written request, provide to a court or commissioner a copy of any rescission form filed with the department that is relevant to proceedings before the court or commissioner.

(b) (1) Notwithstanding Section 7573, if the court finds that the conclusions of all of the experts based upon the results of the genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) are that the man who signed the voluntary declaration is not



the father of the child, the court may set aside the voluntary declaration of paternity.

(2) The notice of motion for genetic tests under this section may be filed not later than two years from the date of the child's birth by either the mother, the man who signed the voluntary declaration as the child's father, or in an action to determine the existence or nonexistence of the father and child relationship pursuant to Section 7630 or in any action to establish an order for child custody, visitation, or child support based upon the voluntary declaration of paternity.

(3) The notice of motion for genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for putting the issue of paternity before the court.

(c) (1) Nothing in this chapter shall be construed to prejudice or bar the rights of either parent to file an action or motion to set aside the voluntary declaration of paternity on any of the grounds described in, and within the time limits specified in, Section 473 of the Code of Civil Procedure. If the action or motion to set aside the voluntary declaration of paternity is for fraud or perjury, the act must have induced the defrauded parent to sign the voluntary declaration of paternity. If the action or motion to set aside a judgment is required to be filed within a specified time period under Section 473 of the Code of Civil Procedure, the period within which the action or motion to set aside the voluntary declaration of paternity must be filed shall commence on the date that the court makes a finding of paternity based upon the voluntary declaration of paternity in an action for custody, visitation, or child support.

(2) The parent seeking to set aside the voluntary declaration of paternity shall have the burden of proof.

(3) Any order for custody, visitation, or child support shall remain in effect until the court determines that the voluntary declaration of paternity should be set aside, subject to the court's power to modify the orders as otherwise provided by law.

(4) Nothing in this section is intended to restrict a court from acting as a court of equity.

(5) If the voluntary declaration of paternity is set aside pursuant to paragraph (1), the court shall order that the mother, child, and alleged father submit to genetic tests pursuant to Chapter 2 (commencing with Section 7550). If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the genetic tests, are that the person who executed the voluntary declaration of paternity is not the father of the child, the question of paternity shall be resolved accordingly. If the person who executed the declaration as the father of the child is not excluded as a possible father, the question of paternity shall be resolved as otherwise provided by law. If the person who executed the declaration of paternity is ultimately determined to be the father of the child, any



child support that accrued under an order based upon the voluntary declaration of paternity shall remain due and owing.

(6) The Judicial Council shall develop the forms and procedures necessary to effectuate this subdivision.

SEC. 10.5. Section 7575 of the Family Code is amended to read:

7575. (a) Either parent may rescind the voluntary declaration of paternity by filing a rescission form with the State Department of Social Services within 60 days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The State Department of Social Services shall develop a form to be used by parents to rescind the declaration of paternity and instruction on how to complete and file the rescission with the State Department of Social Services. The form shall include a declaration under penalty of perjury completed by the person filing the rescission form that certifies that a copy of the rescission form was sent by any form of mail requiring a return receipt to the other person who signed the voluntary declaration of paternity. A copy of the return receipt shall be attached to the rescission form when filed with the State Department of Social Services. The form and instructions shall be written in simple, easy to understand language and shall be made available at the local family support office and the office of local registrar of births and deaths. The department shall, upon written request, provide to a court or commissioner a copy of any rescission form filed with the department that is relevant to proceedings before the court or commissioner.

(b) (1) Notwithstanding Section 7573, if the court finds that the conclusions of all of the experts based upon the results of the genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) are that the man who signed the voluntary declaration is not the father of the child, the court may set aside the voluntary declaration of paternity.

(2) (A) The notice of motion for genetic tests under this section may be filed not later than two years from the date of the child's birth by a local child support agency, the mother, the man who signed the voluntary declaration as the child's father, or in an action to determine the existence or nonexistence of the father and child relationship pursuant to Section 7630 or in any action to establish an order for child custody, visitation, or child support based upon the voluntary declaration of paternity.

(B) The local child support agency's authority under this subdivision is limited to those circumstances where there is a conflict between a voluntary acknowledgement of paternity and a judgment of paternity or a conflict between two or more voluntary acknowledgments of paternity.



(3) The notice of motion for genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for putting the issue of paternity before the court.

(c) (1) Nothing in this chapter shall be construed to prejudice or bar the rights of either parent to file an action or motion to set aside the voluntary declaration of paternity on any of the grounds described in, and within the time limits specified in, Section 473 of the Code of Civil Procedure. If the action or motion to set aside the voluntary declaration of paternity is for fraud or perjury, the act must have induced the defrauded parent to sign the voluntary declaration of paternity. If the action or motion to set aside a judgment is required to be filed within a specified time period under Section 473 of the Code of Civil Procedure, the period within which the action or motion to set aside the voluntary declaration of paternity must be filed shall commence on the date that the court makes a finding of paternity based upon the voluntary declaration of paternity in an action for custody, visitation, or child support.

(2) The parent or local child support agency seeking to set aside the voluntary declaration of paternity shall have the burden of proof.

(3) Any order for custody, visitation, or child support shall remain in effect until the court determines that the voluntary declaration of paternity should be set aside, subject to the court's power to modify the orders as otherwise provided by law.

(4) Nothing in this section is intended to restrict a court from acting as a court of equity.

(5) If the voluntary declaration of paternity is set aside pursuant to paragraph (1), the court shall order that the mother, child, and alleged father submit to genetic tests pursuant to Chapter 2 (commencing with Section 7550). If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the genetic tests, are that the person who executed the voluntary declaration of paternity is not the father of the child, the question of paternity shall be resolved accordingly. If the person who executed the declaration as the father of the child is not excluded as a possible father, the question of paternity shall be resolved as otherwise provided by law. If the person who executed the declaration of paternity is ultimately determined to be the father of the child, any child support that accrued under an order based upon the voluntary declaration of paternity shall remain due and owing.

(6) The Judicial Council shall develop the forms and procedures necessary to effectuate this subdivision.

SEC. 11. Section 7642 of the Family Code is amended to read:

7642. The court has continuing jurisdiction to modify or set aside a judgment or order made under this part. A judgment or order relating to an adoption may only be modified or set aside in the same

manner and under the same conditions as an order of adoption may be modified or set aside under Section 9100 or 9102.

SEC. 12. Section 17212 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17212. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement and child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 17604 and Chapter 6 (commencing with Section 4900) of Part 5 of Division 9.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement program established pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this division, shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file, application, paper, document, or record, or the information contained therein, except as expressly authorized by this section.

(2) In no case shall information be released or the whereabouts of one party or the child disclosed to another party, or to the attorney of any other party, if a protective order has been issued by a court or administrative agency with respect to the former party, a good cause claim under Section 11477.04 of the Welfare and Institutions Code has been approved or is pending, or the public agency responsible for establishing paternity or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to the former party or the child.

(3) Notwithstanding any other provision of law, a proof of service filed by the district attorney shall not disclose the address where service of process was accomplished. Instead, the district attorney shall keep the address in his or her own records. The proof of service shall specify that the address is on record at the district attorney's

office and that the address may be released only upon an order from the court pursuant to paragraph (6) of subdivision (c). The district attorney shall, upon request by a party served, release to that person the address where service was effected.

(c) Disclosure of the information described in subdivision (b) is authorized as follows:

(1) All files, applications, papers, documents, and records as described in subdivision (b) shall be available and may be used by a public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecutions conducted in connection with the administration of the child and spousal support enforcement program approved under Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and any other plan or program described in Section 303.21 of Title 45 of the Code of Federal Regulations and to the county welfare department responsible for administering a program operated under a state plan pursuant to Subpart 1 or 2 or Part B or Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.

(4) Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(5) Public records subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code) may be released.

(6) After a noticed motion and a finding by the court, in a case in which establishment or enforcement actions are being taken, that release or disclosure to the obligor or obligee is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record as described in subdivision (b) to make that item available to the obligor or obligee for examination or copying, or to disclose to the obligor or obligee the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 3 of the Evidence Code shall not be applicable to proceedings under this part. At any hearing of a motion filed pursuant to this section, the court shall inquire of the local child support agency and the parties appearing at the hearing if there is reason to believe that release of the requested information may result in physical or emotional harm to a party. If the court determines that harm may occur, the court shall issue any protective orders or



injunctive orders restricting the use and disclosure of the information as are necessary to protect the individuals.

(7) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a child, or location of a concealed, detained, or abducted child or the location of the concealing, detaining, or abducting person, may be disclosed to any district attorney, any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(8) The social security number, most recent address, and the place of employment of the absent parent may be released to an authorized person as defined in Section 653(c) of Title 42 of the United States Code, only if the authorized person has filed a request for the information, and only if the information has been provided to the California Parent Locator Service by the federal Parent Locator Service pursuant to Section 653 of Title 42 of the United States Code.

(d) (1) “Administration and implementation of the child and spousal support enforcement program,” as used in this section, means the carrying out of the state and local plans for establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

(2) For purposes of this section, “obligor” means any person owing a duty of support.

(3) As used in this chapter, “putative parent” shall refer to any person reasonably believed to be the parent of a child for whom the local child support agency is attempting to establish paternity or establish, modify, or enforce support pursuant to Section 17400.

(e) Any person who willfully, knowingly, and intentionally violates this section is guilty of a misdemeanor.

(f) Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

SEC. 13. Section 17400.5 is added to the Family Code, to read:

17400.5. Except as provided in paragraph (2) of subdivision (a) of Section 17402, if the proposed judgment described in paragraph (2) of subdivision (d) of Section 17400 is entered by the court, the support order in the proposed judgment shall be effective as of the first day of the month following the filing of the complaint.

SEC. 14. Section 17401 is added to the Family Code, to read:

17401. If the parent who is receiving support enforcement services provides to the local child support agency substantial, credible, information regarding the residence or work address of the

support obligor, the agency shall initiate an establishment or enforcement action and serve the defendant, if service is required, within 60 days and inform the parent in writing when those actions have been taken. If the address or any other information provided by the support obligee is determined by the local child support agency to be inaccurate and if, after reasonable diligence, the agency is unable to locate and serve the support obligor within that 60-day period, the local child support agency shall inform the support obligee in writing of those facts. The requirements of this section shall be in addition to the time standards established by the State Department of Social Services pursuant to subdivision (k) of Section 17400.

SEC. 15. Section 17402 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

17402. (a) In any case of separation or desertion of a parent or parents from a child or children that results in aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code being granted to that family, the noncustodial parent or parents shall be obligated to the county for an amount equal to the following:

(1) The amount specified in an order for the support and maintenance of the family issued by a court of competent jurisdiction; or in the absence of a court order, the amount specified in paragraph (2).

(2) The amount of support that would have been specified in an order for the support and maintenance of the family during the period of separation or desertion, but not to exceed one year prior to the date of the filing of the petition or complaint. However, the amount in excess of the aid paid to the family shall not be retained by the county, but disbursed to the family.

(3) The obligation shall be reduced by any amount actually paid by the parent directly to the custodian of the child or to the local child support agency of the county in which the child is receiving aid during the period of separation or desertion for the support and maintenance of the family.

(b) The local child support agency shall take appropriate action pursuant to this section as provided in subdivision (l) of Section 17400. The local child support agency may establish liability for child support as provided in subdivision (a) when public assistance was provided by another county or by other counties.

(c) The amount of the obligation established under paragraph (2) of subdivision (a) shall be determined by using the appropriate child support guidelines currently in effect. If one parent remains as a custodial parent, the guideline support shall be computed in the normal manner. If neither parent remains as a custodial parent, the support shall be computed by combining the noncustodial parents' incomes and placing the figure obtained in the column for

noncustodial parent. A zero shall be placed in the column for the custodial parent and the amount of guideline support resulting shall be proportionately shared between the parents as directed by the court. The parents shall pay the amount of support specified in the support order to the local child support agency.

SEC. 16. Section 17433 is added to the Family Code, to read:

17433. In any action in which a judgment or order for support was entered after the entry of the default of the defendant under Section 17430, the court shall relieve the defendant from that judgment or order if the defendant establishes that he or she was mistakenly identified in the order or in any subsequent documents or proceedings as the person having an obligation to provide support. The defendant shall also be entitled to the remedies specified in subdivisions (d) and (e) of Section 17530 with respect to any actions taken to enforce that judgment or order.

SEC. 17. Section 17521 is added to the Family Code, to read:

17521. The order to show cause or notice of motion described in subdivision (j) of Section 17520 shall be filed and heard in the superior court. If, however, criminal proceedings pursuant to paragraph (4) of subdivision (a) of Section 166 of the Penal Code, relating to a support order, or pursuant to Section 270 of the Penal Code are pending against the applicant in the municipal court, in a county in which there is a municipal court, an order to show cause or notice of motion for judicial review of the district attorney's decision not to issue a release may be filed and heard in that court.

SEC. 18. Section 17530 is added to the Family Code, to read:

17530. (a) Notwithstanding any other provision of law, this section shall apply to any actions taken to enforce a judgment or order for support entered as a result of action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, where it is alleged that the enforcement actions have been taken in error against a person who is not the support obligor named in the judgment or order.

(b) Any person claiming that any support enforcement actions have been taken against that person, or his or her wages or assets, in error, shall file a claim of mistaken identity with the local child support agency. The claim shall include verifiable information or documentation to establish that the person against whom the enforcement actions have been taken is not the person named in the support order or judgment. The claim shall be filed on a form established by the Judicial Council that shall specify, immediately above the signature line, that the filing of a false claim shall be punishable as a misdemeanor. A copy of the claim form shall be date stamped by the office of the local child support agency and shall be returned to the claimant.

(c) The local child support agency shall immediately investigate any claim of mistaken identity and shall resolve the claim within 30



days unless exceptional circumstances prevent a resolution within that time. The local child support agency shall provide the claimant with a written statement of the agency's conclusions, or a statement explaining the exceptional circumstances that have delayed the agency's conclusions and an estimated date when conclusions will be reached, within that 30-day period.

(d) If the local child support agency determines that a claim filed pursuant to this section is meritorious, or if the court enters an order pursuant to Section 17433, the agency shall immediately take the steps necessary to terminate all enforcement activities with respect to the claimant, to return to the claimant any assets seized, to terminate any levying activities or attachment or assignment orders, to release any license renewal or application being withheld pursuant to Section 17520, to return any sums paid by the claimant pursuant to the judgment or order, including sums paid to any federal, state, or local government, but excluding sums paid directly to the support obligee, and to ensure that all other enforcement agencies and entities cease further actions against the claimant. With respect to a claim filed under this section, the local child support agency shall also provide the claimant with a statement certifying that the claimant is not the support obligor named in the support order or judgment, which statement shall be prima facie evidence of the claimant's identity in any subsequent enforcement proceedings or actions with respect to that support order or judgment.

(e) If the local child support agency rejects a claim pursuant to this section, or if the agency, after finding a claim to be meritorious, fails to take any of the remedial steps provided in subdivision (d), the claimant may file an action with the superior court to establish his or her mistaken identity or to obtain the remedies described in subdivision (d), or both.

(f) Filing a false claim pursuant to this section shall be a misdemeanor.

(g) The Judicial Council shall develop forms for use pursuant to this section.

(h) This section shall become operative on April 1, 2000.

SEC. 19. Section 166.5 is added to the Penal Code, to read:

166.5. (a) After arrest and before plea or trial or after conviction or plea of guilty and before sentence under paragraph (4) of subdivision (a) of Section 166, for willful disobedience of any order for child, spousal, or family support issued pursuant to Division 9 (commencing with Section 3500) of the Family Code or Section 11475.1 of the Welfare and Institutions Code, the court may suspend proceedings or sentence therein if:

(1) The defendant appears before the court and affirms his or her obligation to pay to the person having custody of the child, or the spouse, that sum per month as shall have been previously fixed by the court in order to provide for the minor child or the spouse.

(2) The defendant provides a bond or other undertaking with sufficient sureties to the people of the State of California in a sum as the court may fix to secure the defendant's performance of his or her support obligations and that bond or undertaking is valid and binding for two years, or any lesser time that the court shall fix.

(b) Upon the failure of the defendant to comply with the conditions imposed by the court in subdivision (a), the defendant may be ordered to appear before the court and show cause why further proceedings should not be had in the action or why sentence should not be imposed, whereupon the court may proceed with the action, or pass sentence, or for good cause shown may modify the order and take a new bond or undertaking and further suspend proceedings or sentence for a like period.

SEC. 20. Section 166.5 is added to the Penal Code, to read:

166.5. (a) After arrest and before plea or trial or after conviction or plea of guilty and before sentence under paragraph (4) of subdivision (a) of Section 166, for willful disobedience of any order for child, spousal, or family support issued pursuant to Division 9 (commencing with Section 3500) of the Family Code or Section 17400 of the Family Code, the court may suspend proceedings or sentence therein if:

(1) The defendant appears before the court and affirms his or her obligation to pay to the person having custody of the child, or the spouse, that sum per month as shall have been previously fixed by the court in order to provide for the minor child or the spouse.

(2) The defendant provides a bond or other undertaking with sufficient sureties to the people of the State of California in a sum as the court may fix to secure the defendant's performance of his or her support obligations and that bond or undertaking is valid and binding for two years, or any lesser time that the court shall fix.

(b) Upon the failure of the defendant to comply with the conditions imposed by the court in subdivision (a), the defendant may be ordered to appear before the court and show cause why further proceedings should not be had in the action or why sentence should not be imposed, whereupon the court may proceed with the action, or pass sentence, or for good cause shown may modify the order and take a new bond or undertaking and further suspend proceedings or sentence for a like period.

SEC. 21. Section 11350 of the Welfare and Institutions Code is amended to read:

11350. (a) In any case of separation or desertion of a parent or parents from a child or children that results in aid under this chapter being granted to that family, the noncustodial parent or parents shall be obligated to the county for an amount equal to the following:

(1) The amount specified in an order for the support and maintenance of the family issued by a court of competent



jurisdiction; or in the absence of a court order, the amount specified in paragraph (2).

(2) The amount of support that would have been specified in an order for the support and maintenance of the family during the period of separation or desertion, but not to exceed one year prior to the date of the filing of the petition or complaint, provided that any amount in excess of the aid paid to the family shall not be retained by the county, but disbursed to the family.

(3) The obligation shall be reduced by any amount actually paid by the parent directly to the custodian of the child or to the district attorney of the county in which the child is receiving aid during the period of separation or desertion for the support and maintenance of the family.

(b) The district attorney shall take appropriate action pursuant to this section as provided in subdivision (l) of Section 11475.1. The district attorney may establish liability for child support as provided in subdivision (a) when public assistance was provided by another county or by other counties.

(c) The amount of the obligation established under paragraph (2) of subdivision (a) shall be determined by using the appropriate child support guidelines currently in effect. If one parent remains as a custodial parent, the guideline support shall be computed in the normal manner. If neither parent remains as a custodial parent, the support shall be computed by combining the noncustodial parents' incomes and placing the figure obtained in the column for noncustodial parent. A zero shall be placed in the column for the custodial parent and the amount of guideline support resulting shall be proportionately shared between the parents as directed by the court. The parents shall pay the amount of support specified in the support order to the district attorney.

SEC. 22. Section 11350.61 is added to the Welfare and Institutions Code, to read:

11350.61. The order to show cause or notice of motion described in subdivision (j) of Section 11350.6 shall be filed and heard in the superior court. If, however, criminal proceedings pursuant to paragraph (4) of subdivision (a) of Section 166 of the Penal Code, relating to a support order, or pursuant to Section 270 of the Penal Code are pending against the applicant in the municipal court, in a county in which there is a municipal court, an order to show cause or notice of motion for judicial review of the district attorney's decision not to issue a release may be filed and heard in that court.

SEC. 23. Section 11356.2 is added to the Welfare and Institutions Code, to read:

11356.2. In any action in which a judgment or order for support was entered after the entry of the default of the defendant under Section 11355, the court shall relieve the defendant from that judgment or order if the defendant establishes that he or she was

mistakenly identified in the order or in any subsequent documents or proceedings as the person having an obligation to provide support. The defendant shall also be entitled to the remedies specified in subdivisions (d) and (e) of Section 11358 with respect to any actions taken to enforce that judgment or order.

SEC. 24. Section 11358 is added to the Welfare and Institutions Code, to read:

11358. (a) Notwithstanding any other provision of law, this section shall apply to any actions taken to enforce a judgment or order for support entered as a result of action filed by the district attorney pursuant to Section 11350, 11350.1, or 11475.1, where it is alleged that the enforcement actions have been taken in error against a person who is not the support obligor named in the judgment or order.

(b) Any person claiming that any support enforcement actions have been taken against that person, or his or her wages or assets, in error, shall file a claim of mistaken identity with the district attorney. The claim shall include verifiable information or documentation to establish that the person against whom the enforcement actions have been taken is not the person named in the support order or judgment. The claim shall be filed on a form established by the Judicial Council that shall specify, immediately above the signature line, that the filing of a false claim shall be punishable as a misdemeanor. A copy of the claim form shall be date stamped by the office of the district attorney and shall be returned to the claimant.

(c) The district attorney shall immediately investigate any claim of mistaken identity and shall resolve the claim within 30 days unless exceptional circumstances prevent a resolution within that time. The district attorney shall provide the claimant with a written statement of the district attorney's conclusions, or a statement explaining the exceptional circumstances that have delayed the district attorney's conclusions and an estimated date when conclusions will be reached, within that 30-day period.

(d) If the district attorney determines that a claim filed pursuant to this section is meritorious, or if the court enters an order pursuant to Section 11356.2, the district attorney shall immediately take the steps necessary to terminate all enforcement activities with respect to the claimant, to return to the claimant any assets seized, to terminate any levying activities or attachment or assignment orders, to release any license renewal or application being withheld pursuant to Section 11350.6, to return any sums paid by the claimant pursuant to the judgment or order, including sums paid to any federal, state, or local government, but excluding sums paid directly to the support obligee, and to ensure that all other enforcement agencies and entities cease further actions against the claimant. With respect to a claim filed under this section, the district attorney shall also provide the claimant with a statement certifying that the claimant is not the



support obligor named in the support order or judgment, which statement shall be prima facie evidence of the claimant's identity in any subsequent enforcement proceedings or actions with respect to that support order or judgment.

(e) If the district attorney rejects a claim pursuant to this section, or if the district attorney, after finding a claim to be meritorious, fails to take any of the remedial steps provided in subdivision (d), the claimant may file an action with the superior court to establish his or her mistaken identity or to obtain the remedies described in subdivision (d), or both.

(f) Filing a false claim pursuant to this section shall be a misdemeanor.

(g) The Judicial Council shall develop forms for use pursuant to this section.

(h) This section shall become operative on April 1, 2000.

SEC. 25. Section 11475.12 is added to the Welfare and Institutions Code, to read:

11475.12. If the parent who is receiving support enforcement services provides to the district attorney substantial, credible, information regarding the residence or work address of the support obligor, the district attorney shall initiate an establishment or enforcement action and serve the defendant, if service is required, within 60 days and inform the parent in writing when those actions have been taken. If the address or any other information provided by the support obligee is determined by the district attorney to be inaccurate and if, after reasonable diligence, the district attorney is unable to locate and serve the support obligor within that 60-day period, the district attorney shall inform the support obligee in writing of those facts. The requirements of this section shall be in addition to the time standards established by the State Department of Social Services pursuant to subdivision (k) of Section 11475.1.

SEC. 26. Section 11475.14 is added to the Welfare and Institutions Code, to read:

11475.14. Except as provided in paragraph (2) of subdivision (a) of Section 11350, if the proposed judgment described in paragraph (2) of subdivision (c) of Section 11475.1 is entered by the court, the support order in the proposed judgment shall be effective as of the first day of the month following the filing of the complaint.

SEC. 27. Section 11478.1 of the Welfare and Institutions Code is amended to read:

11478.1. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement and child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:



(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 11475.2 of this code and Chapter 6 (commencing with Section 4900) of Part 5 of Division 9 of the Family Code.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement program established pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article, shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file, application, paper, document, or record, or the information contained therein, except as expressly authorized by this section.

(2) In no case shall information be released or the whereabouts of one party or the child disclosed to another party, or to the attorney of any other party, if a protective order has been issued by a court or administrative agency with respect to the former party, a good cause claim under Section 11477.04 has been approved or is pending, or the public agency responsible for establishing paternity or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to the former party or the child.

(3) Notwithstanding any other provision of law, a proof of service filed by the district attorney shall not disclose the address where service of process was accomplished. Instead, the district attorney shall keep the address in his or her own records. The proof of service shall specify that the address is on record at the district attorney's office and that the address may be released only upon an order from the court pursuant to paragraph (6) of subdivision (c). The district attorney shall, upon request by a party served, release to that person the address where service was effected.

(c) Disclosure of the information described in subdivision (b) is authorized as follows:

(1) All files, applications, papers, documents and records as described in subdivision (b) shall be available and may be used by a public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecutions conducted in connection with the administration of the child and spousal support enforcement



program approved under Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and any other plan or program described in Section 303.21 of Title 45 of the Code of Federal Regulations and to the county welfare department responsible for administering a program operated under a state plan pursuant to Subpart 1 or 2 or Part B or Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.

(4) Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(5) Public records subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code) may be released.

(6) After a noticed motion and a finding by the court, in a case in which establishment or enforcement actions are being taken, that release or disclosure to the obligor or obligee is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record as described in subdivision (b) to make that item available to the obligor or obligee for examination or copying, or to disclose to the obligor or obligee the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 3 of the Evidence Code shall not be applicable to proceedings under this part. At any hearing of a motion filed pursuant to this section, the court shall inquire of the district attorney and the parties appearing at the hearing if there is reason to believe that release of the requested information may result in physical or emotional harm to a party. If the court determines that harm may occur, the court shall issue any protective orders or injunctive orders restricting the use and disclosure of the information as are necessary to protect the individuals.

(7) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a child, or location of a concealed, detained, or abducted child or the location of the concealing, detaining, or abducting person, may be disclosed to any district attorney, any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(8) The social security number, most recent address, and the place of employment of the absent parent may be released to an authorized



person as defined in Section 653(c) of Title 42 of the United States Code, only if the authorized person has filed a request for the information, and only if the information has been provided to the California Parent Locator Service by the federal Parent Locator Service pursuant to Section 653 of Title 42 of the United States Code.

(d) (1) “Administration and implementation of the child and spousal support enforcement program,” as used in this section, means the carrying out of the state and local plans for establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

(2) For purposes of this section, “obligor” means any person owing a duty of support.

(3) As used in this chapter, “putative parent” shall refer to any person reasonably believed to be the parent of a child for whom the district attorney is attempting to establish paternity or establish, modify, or enforce support pursuant to Section 11475.1.

(e) Any person who willfully, knowingly, and intentionally violates this section is guilty of a misdemeanor.

(f) Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

SEC. 28. Section 10.5 of this bill incorporates amendments to Section 7575 of the Family Code proposed by both this bill and SB 240. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 7575 of the Family Code, and (3) this bill is enacted after SB 240, in which case, Section 10 of this bill shall not become operative.

SEC. 29. Sections 8, 13, 14, 16, 17, 18, and 20 of this bill shall become operative only if AB 196 is enacted and becomes operative on or before January 1, 2000, and this bill is enacted after AB 196, in which case Sections 7, 19, 22, 23, 24, 25, and 26 of this bill shall not become operative.

SEC. 30. Section 12 of this bill shall become operative only if (1) AB 196 is enacted and becomes operative on or before January 1, 2000, (2) that bill adds Section 17212 to the Family Code, and (3) this bill is enacted after AB 196, in which case Section 27 of this bill shall not become operative.

SEC. 31. Section 15 of this bill shall become operative only if (1) AB 196 is enacted and becomes operative on or before January 1, 2000, (2) that bill adds Section 17402 to the Family Code, and (3) this bill is enacted after AB 196, in which case Section 21 of this bill shall not become operative.

SEC. 32. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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